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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,648	01/21/2004	David C. Curtis	M314	3331
30406	7590	12/27/2006	EXAMINER	
ROBERT L. MARSH 54 DANADA DRIVE P.O. BOX 4468 WHEATON, IL 60187-4468			SORKIN, DAVID L	
			ART UNIT	PAPER NUMBER
			1723	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		12/27/2006	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/761,648	CURTIS, DAVID C.	
	Examiner	Art Unit	
	David L. Sorkin	1723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 13 October 2006.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 2-4, 6-10 and 13-17 is/are pending in the application.
- 4a) Of the above claim(s) 13 is/are withdrawn from consideration.
- 5) Claim(s) 3,4,6-10 and 16 is/are allowed.
- 6) Claim(s) 2,14,15 and 17 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application
- 6) Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 2, 14, 15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lennox (US 5,104,232); and in the alternative as being unpatentable over Lennox (US 5,104,232) in view of Gontero et al. (US 5,520,457). Also, claim 17 is further in the alternative rejected as unpatentable on the aforementioned grounds, further in view of Holly (US 3,506,019). Regarding claims 14 and 15, Lennox ('232) discloses a marinating machine having a first axle (the axle of 19, the one attached to motor 21) having an axis of rotation, a second axle (the axle of the other one of 19) having a second axis of rotation, said first axis axes parallel to said second axis and spaced therefrom, a motor (21), a drum (12) supported by said first axle and said second axle, said drum having a plurality of paddles (26 and/or 36) therein for agitating food products within said drum, the improvement comprising a drive assembly between said motor and said first axle for drivingly rotating only said first axle with power from said motor (see Fig. 1), said first axle rotating in a direction wherein said rotation will apply an upward component of force to a surface of said drum (see col. 5, lines 23-32; Fig. 1), said first and third axis defining a first plane, said second and third axis defining a second plane, said first plane and second plane intersecting at an angle (see Figs. 1

and 12), and a vacuum line (see col. 6, lines 50-52; col. 7, lines 40-41) connected to said drum for drawing a vacuum therein. A numerical value for the angle is not expressly disclosed by Lennox ('232). As depicted in Figs. 1 and 12, the angle is roughly 90 degrees. However, "where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation" *In re Aller* (105 USPQ 233, 235 (CCPA 1955). Gontero et al. (US 5,520,457) is cited of evidence of knowledge in the art of placing roller supporting a drum at the recited angle position, (see Fig. 2). Regarding claim 2, a wheel (19) is fixed on said first axle, said wheel fixed for rotation with said first axle, said wheel having an outer surface contactable by said drum for rotating said drum (see Figs. 1 and 12). Regarding claim 17, the paddles are not disclosed to be removable. *In re Dulberg* 129 USPQ 348, 349 (CCPA 1961) is relied upon concerning the obviousness of making parts removable. It would have been obvious to one of ordinary skill in the art to have made the paddles removable to facilitate cleaning, repair or replacement. Holly (US 3,506,019) is cited for its teaching of making paddles removable from a drum without tools, to facilitate cleaning (see col. 2, lines 13-18 and col. 4, lines 31 to 36).

Allowable Subject Matter

3. Claims 3, 4, 6-10 and 16 are allowed.

Response to Arguments

4. Applicant's arguments are moot due to the allowance of claims 3, 4 and 6-10 and the new grounds for rejection for claims 2, 14, 15 and 17.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Sorkin whose telephone number is 571-272-1148. The examiner can normally be reached on 9:00 -5:30 Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1723

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



David L. Sorkin
Primary Examiner
Art Unit 1723

DLS